

### REMARKS-General

1. Applicant acknowledges the allowability of claims 4-6, 9, 11 and 19. The newly drafted independent claims 21-23 incorporate all structural limitations of the original claim 1 and include further limitations previously brought forth in the original allowable claims 4-6, 9, 11 and 19, including any intervening claims, respectively. No new matter has been included. The newly drafted independent claims 21-23 are rewritten from the original allowable claims 4-6 respectively and the dependent claims 24-27 are rewritten from the original allowable claims 9, 11 and 19 respectively. In addition, the newly drafted independent claim 28 incorporates all structural limitations of the original claim 1 and includes further limitations previously brought forth in the disclosure. No new matter has been included. All new claims 21-40 are submitted to be of sufficient clarity and detail to enable a person of average skill in the art to make and use the instant invention, so as to be pursuant to 35 USC 112.

#### Response to Rejection of Claims 4-6 under 35USC112

2. The applicant submits that the newly drafted claims 21-23 particularly point out and distinctly claim the subject matter of the instant invention, as pursuant to 35USC112.

#### Regarding to Rejection of Claims 1-3, 7-8, 10, 12, 17-18 and 20 under 35USC102

3. Pursuant to 35 U.S.C. 102, "a person shall be entitled to a patent unless:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.

4. In view of 35 U.S.C. 102(b), it is apparent that a person shall not be entitled to a patent when his or her invention was patent in this country more than one year prior to the date of the application for patent in the United States.

5. However, the Bissey patent (US. 5,996,865) and the instant invention are not the same invention according to the fact that the independent claim 1 of the Bissey patent does not read upon the instant invention and the independent claim 28 of the

instant invention does not read upon the Bissey patent too. Apparently, the instant invention, which discloses an ammunition container, should not be the same invention as the Bissey patent which discloses a hand gun container assembly.

6. Bissey fails to anticipate the distinctive features of:

(i) a pouch having a back wall and a front wall overlapped thereon to define a top opening and a storage cavity for receiving the magazine loaded with the bullets therein while the bullets are allowed to be extracted through the top opening (as claimed in claim 28);

(ii) an elongated element having an affixing end extended from the back wall of pouch and a free end extending over the storage cavity toward a front surface of the front wall for riding over the magazine when the magazine is stored in the storage cavity, wherein the elongated element has a predetermined width adapted for slidably passing through a bullet gap between two bullets held on the magazine so as to substantially hold the magazine within the storage cavity in position while the bullets are free to be extracted (as claimed in claim 28);

(iii) a fastening unit provided on the front surface of the front wall to detachably fasten with the free end of the elongated element for substantially retaining the magazine within the storage cavity via the elongated element in such a manner that each of the bullets is capable of being extracted from the magazine while the magazine is securely retained in the pouch (as claimed in claim 28);

(iv) the elongated element comprising **an elastic band** extended from the back wall of the pouch for providing an elastic retaining force on a top edge of the magazine when the elastic band rides on top of the magazine so as to lock up the magazine within the storage cavity (as claimed in claim 29);

(v) the fastening unit comprises a **first fastener** provided at the free end of the elongated element and a **second fastener** provided on a front side of the front wall, wherein the first fastener is detachably fastened with the first fastener for securing the elongated element on top of the magazine at the bullet gap to lock up the magazine within the storage cavity (as claimed in claims 30 to 31);

(vi) the first and second fasteners forming hook and loop fasteners (as claimed in claims 32 to 33);

(vii) a **shielding flap** extending from the back wall towards the front wall to enclose the storage cavity of the pouch for preventing the bullets received on the magazine from dropping off from the pouch (as claimed in claims 34 to 36);

(viii) the ammunition container further comprising means for detachably attaching the pouch on a rifle stock (as claimed in claims 37 to 38); and

(ix) the ammunition container further comprising means for detachably attaching the pouch on a user's body (as claimed in claims 39 to 40).

7. Bissey merely anticipates (column 2, lines 46-51) the container 10 comprises an outer casing 12 having opposing side walls 14 and 16 front wall 18, rear wall 20 and bottom wall 22, wherein the outer casing 12 is made of rigid material such as metal. Bissey also discloses (column 2, lines 58-60) the container 10 houses a foam member 30 having a plurality of receptacle indents 36 formed thereon for accommodating ammunition (column 3, lines 8-9). Bissey merely teaches the ammunition is slidably inserted into the respective receptacle indent 36 which is shown as in Fig. 1 without any mention of any pouch having a storage cavity for receiving the magazine loaded with the bullets therein while the bullets are allowed to be extracted through the top opening. In other words, when the magazine is inserted into the receptacle indent 36 taught by Bissey, the bullets held by the magazine cannot be withdrawn therefrom.

8. Regarding to claims 28 to 33 of the instant invention, Bissey merely suggests (column 2, lines 64+) that the receptacle indent 36 can be dimensioned to receive the ammunition therein. It is apparent that Bissey fails to teach and anticipate the same recitation and limitation in the amended claim 28 of the instant invention of using the elongated element to ride over the magazine at the bullet gap when the magazine is stored in the storage cavity. Therefore, the magazine is substantially held within the storage cavity in position while the bullets are free to be extracted.

9. Besides, Bissey does not anticipate or suggest any elastic band extended from the back wall of the pouch for providing an elastic retaining force on a top edge of the magazine when the elastic band rides on top of the magazine so as to lock up the

magazine within the storage cavity. In addition, when two or more magazines can be placed in the storage cavity, the elastic band can be stretched to selectively adjust a distance between the front and back walls (a width of the storage cavity) to provide the elastic retaining force against the magazines so as to hold the magazines in position.

10. Bissey merely anticipates (column 2, lines 52-57) the container 10 further comprises a hinged lid 24 which is secured on the outer casing 12 by means of zipper 28 to prohibit unwanted entry into the container. In other words, Bissey merely suggests a conventional container having a container body and a container cover to enclose the container body. Therefore, Bissey fails to anticipate and teach the shielding flap is folded to enclose the storage cavity of the pouch for preventing the bullets received on the magazine from dropping off from the pouch and is folded to an opened position for allowing the bullets to be freely extracted from the magazine while the magazine is held by the elongated element.

11. Regarding to claims 38 to 40 of the instant invention, Bissey merely suggests the straps 46, 48 can be used for attaching to a user body. However, Bissey fails to anticipate the ammunition container can be detachably attached to either a rifle stock or a user's body such that the user is able to freely extract the bullets from the magazine while the magazine is secured in the pouch via the magazine retaining device.

12. Applicant believes that for all of the foregoing reasons, all of the claims are in condition for allowance and such action is respectfully requested.

#### **Response to Rejection of Claims 13, 14 and 16 under 35USC103**

13. The Examiner rejected claims 13, 14 and 16 over Bissey in view of Terry or Finn. Pursuant to 35 U.S.C. 103:

“(a) A patent may not be obtained though the invention is **not identically** disclosed or described as set forth in **section 102 of this title**, if the **differences** between the subject matter sought to be patented and the prior art are such that the **subject matter as a whole would have been obvious** at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.”

14. In view of 35 U.S.C. 103(a), it is apparent that to be qualified as a prior art under 35USC103(a), the prior art must be cited under 35USC102(a)~(g) but the disclosure of the prior art and the invention are not identical and there are one or more differences between the subject matter sought to be patented and the prior art. In addition, such differences between the subject matter sought to be patented **as a whole** and the prior art are obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

15. In other words, the differences between the subject matter sought to be patent as a whole of the instant invention and Bissey which is qualified as prior art of the instant invention under 35USC102(a)~(g) are obvious in view of Terry or Finn at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

16. Bissey describes discloses a hand gun container assembly for securing a hand gun and ammunition in the passenger compartment of a vehicle. Terry or Finn, on the other hand, describes pouches attached to rifle stocks.

17. The Examiner appears to reason that since Bissey teaches that the ammunition is held in the hand gun container assembly, it would have been obvious to one skilled in the art to attach the hand gun container assembly to the rifle stocks. But this is clearly **not** a proper basis for combining references in making out an obviousness rejection of the present claims. Rather, the invention must be considered as a whole and there must be something in the reference that suggests the combination or the modification. See Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick, 221 U.S.P.Q. 481, 488 (Fed. Cir. 1984) ("The claimed invention must be considered as a whole, and the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination"), In re Gordon, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984), ("The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.") In re Laskowski, 10 U.S.P.Q.2d 1397, 1398 (Fed. Cir. 1989), ("Although the Commissioner suggests that [the structure in the primary prior art reference] could readily be modified to form the [claimed] structure, "[t]he mere fact that the prior art could be modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.")

18. In any case, even combining Bissey, Terry and Finn would not provide the invention as claimed -- a clear indicia of nonobviousness. Ex parte Schwartz, slip op. p.5 (BPA&I Appeal No. 92-2629 October 28, 1992), ("Even if we were to agree with the examiner that it would have been obvious to combine the reference teachings in the manner proposed, the resulting package still would not comprise zipper closure material that terminates short of the end of the one edge of the product containing area, as now claimed."). That is, modifying Bissey with Terry or Finn, as proposed by the Examiner, would not provide the ammunition container pouch having the above distinctive features (i) to (ix) of the instant invention. In other words, the difference between Bissey and the instant invention as claimed in claims 32 to 40 is not limited to the disclosure of "container", but includes the above distinctive features (i) to (ix).

19. Therefore, applicant believes that neither Bissey, Terry nor Finn, separately or in combination, suggest or make any mention whatsoever of using a magazine retaining device to hold the magazine in the pouch while the bullets can be accessed as recited in claim 28.

20. Applicant believes that for all of the foregoing reasons, all of the claims are in condition for allowance and such action is respectfully requested.

#### **The Cited but Non-Applied References**


21. The cited but not relied upon references have been studied and are greatly appreciated, but are deemed to be less relevant than the relied upon references.

22. A total of twenty claims, including four independent claims and sixteen dependent claims, are presented. A check in an amount of US\$44.00 is submitted herewith to pay the additional filing fee of the fourth independent claim in excess of three. This amount is believed to be correct; however, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 502111.

23. In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of the objection are requested. Allowance of claims 21-40 at an early date is solicited.

24. Should the Examiner believe that anything further is needed in order to place the application in condition for allowance, he is requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

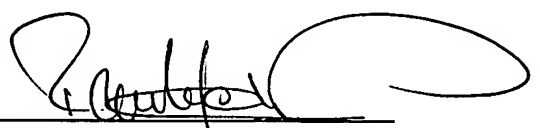


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#### CERTIFICATE OF MAILING

I hereby certify that this corresponding is being deposited with the United States Postal Service by First Class Mail, with sufficient postage, in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on the date below.

Date: October 20, 2000

Signature:   
Person Signing: Raymond Y. Chan